IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 521 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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NATHUBHAI LAKHIABHAI HALPATI & 4 - Appellant(s)
Versus
BACHUBHA JORUBHAI GOHIL & 2 - Defendant(s)

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Appearance :
MR DR BHATT for Appellant(s) : 1 - 5.
NOTICE SERVED for Defendant(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 20/07/2006

ORAL JUDGMENT

1. This appeal is directed against the judgement and award dated 18.05.1993 passed by the M.A.C. Tribunal, Valsad, in M.A.C.P. No. 709 of 1987 whereby the Tribunal has partly allowed the claim of the appellants to the tune of Rs. 14,800/-.

2. The brief facts emerging from the record is that Rajubhai Nanubhai Patel, Bachubhai Nathubhai and Maheshbhai were studying in Mr. Desai Arts and Shri E.E. Laher Kosadia College, Chikhali. On 15.06.1987 at 12.00 p.m. at the time of examination they were waiting for the bus and it

was late. The truck bearing No. GTO 3645 was passing by the road and was going towards college.

3. The students requested driver of the truck and he permitted the students to travel by his truck by collecting fare. There is a creek on the road. The truck was passing by the bridge over the creek. The driver was driving rashly and negligently and as a result of this the truck skidded and breaking the railings of the bridge, it fell into the creek from the height of about 20ft. As a result of this accident Rajubhai Nanubhai Patel sustained injuries while Bachubhai Nathubhai succumbed to the injuries on the spot. Therefore petitioner filed a separate petitions praying for compensation.

4. Learned advocate for the appellant has submitted that Tribunal has materially erred in law as well in facts in computing 80% liability of the deceased, which is grave error of law as

well as facts. The opponent No. 1 should have been made liable to the tune of 80% and not at 20% and therefore also grave injustice has been caused to the appellants.

5. On perusal of the documents placed on record it appears that while passing the judgment and award in the said petition, the Tribunal has observed as under:

> “that duty of the driver is to drive in a manner which would cause harm to no-one on the road, further opponent No. 1 must have, therefore, seen the truck following the cart, and he must have also seen the movement of the truck and looking to the movement, he must have definitely judged the truck driver following the cart was trying to overtake. There was sufficient distance between the two vehicles and opponent No. 1 had a time to apply the brakes in time so as to avert the incident, further Trial Court came to the conclusion that truck coming from the opposite direction ought not to have overtaken the cart especially when the ill fated truck was coming from the opposite direction. The truck driver coming from the opposite direction could have avoided the incident by abstaining from overtaking the cart but hazardously he preferred to overtake the cart and incident happened... “

6. In view of the above finding I am of the view that the Trial Court has not committed any error in passing the impugned award. Learned Counsel

for the appellant is not able to point out anything contrary to takes a different view of the matter. I am in complete agreement with the reasoning adopted and the findings arrived at by the trial court. No case is made out to cause interference. Hence the appeal is dismissed. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*